In the matter of consolidated proceedings pursuant to Article 1126 of the NAFTA in:

(1) Canfor Corporation v. United States of America,

(2) Tembec *et al.* v. United States of America, and

(3) Terminal Forest Products Ltd. v. United States of America

PROCEDURAL ORDER NO. 1

17 December 2005

CONSIDERING :

(A) The Order of the Consolidation Tribunal of 7 September 2005;

(B) The letter of the Arbitral Tribunal of 21 September 2005, making proposals regarding the conduct and sequence of the proceedings, and inviting the Parties to reach agreement on these matters or, if no agreement can be reached, to submit their own views on or before Friday, 30 September 2005;

(C) Tembec's letter of 23 September 2005, objecting to the date of 30 September 2005;

(D) Canfor's and Terminal's letter of 28 September 2005, also objecting to the date of 30 September 2005;

(E) The United States' letter of 30 September 2005, submitting its views on the Tribunal's proposals and responding to the issues raised in Tembec's letter of 23 September 2005;

(F) The letter of the Tribunal of 4 October 2005, inviting the Claimants to file any observation they may have on the letter of the United States of 30 September 2005, by 11 October 2005;

(G) The letters of Canfor and Terminal as well as Tembec of 11 October 2005, responding to the United States' letter of 30 September 2005;

(H) The letter of the Tribunal of 14 October 2005, inviting the United States to file any observation it may have on the submissions made in the letters of Claimants referred to in Recital (G) above, by 21 October 2005;

(I) The letter of the United States of 21 October 2005, giving observations on Claimants' submissions of 11 October 2005;

(J) The fact that the United States has raised an objection on the basis of Article 1901(3) of the NAFTA with respect to the claims of Canfor and Tembec, and has stated to raise the same objection with respect to Terminal's claims;

(K) The fact that the United States has raised an objection on the basis of Article 1101(1) of the NAFTA with respect to the claims of Canfor and Tembec and has stated to raise the same objection with respect to Terminal's claims;

(L) The fact that the United States' objection on the basis of Article 1101(1) of the NAFTA was addressed as a preliminary question in the *Tembec* arbitration but, according to the United States, was to be treated with the merits in the *Canfor* arbitration;

(M) The fact that the United States has raised an additional objection on the basis of Article 1121 of the NAFTA in the *Tembec* arbitration;

(N) The assertion by Tembec that the United States has not timely raised its objections to jurisdiction pursuant to Article 21(3) of the UNCITRAL Arbitration Rules;

(O) The assertion by Canfor that the United States has waived its entitlement to have heard as a preliminary matter its objections on the basis of Article 1101(1) and has waived its objections on the basis of 1121 of the NAFTA;

(P) The statement by Terminal in its letter of 11 October 2005 that Terminal does not insist upon the filing of a Statement of Claim prior to the United States advancing its objection to jurisdiction should the United States wish to proceed in this manner; the statement by Terminal in its letter of 15 November 2005 that if the Tribunal is contemplating considering objections based on Article 1101 at a preliminary stage, then it would be appropriate for Terminal to be permitted to file a Statement of Claim prior to the briefing of that jurisdictional objection;

(Q) The statement by the United States in its letter of 21 October 2005 that the "United States is prepared to rest on the submissions it made in the *Tembec* arbitration with respect to Article 1101(1) and 1121 objections, which arguments apply *mutatis mutandis* to Canfor and Terminal, as the case may be," while it does not intend to raise an objection based on Article 1121 with respect to Terminal's claim (*id.* n. 2);

(R) The impossibility, notwithstanding proposals of the Tribunal, to determine a date for a procedural hearing within a reasonable period of time, and the appropriate

alternative to adopt the conduct and sequence of the proceedings by correspondence, possibly followed by a telephone conference with the Parties;

(S) The requirement that arbitration proceedings take place with due dispatch;

(T) The draft of this Order that was submitted to the Parties on 9 November 2005 for their comment by 16 November 2005;

(U) The comments by Canfor, Terminal and the United States in their letters of 16 November 2005;

(V) Tembec's letter of 16 November 2005, in which it states, *inter alia*: "Tembec considers that the Tribunal's request for comments on its draft procedural order in only one week is contrary to the consensual nature of the proceedings and unduly constrains the parties' ability to consult with each other regarding the procedures that might govern this arbitration;"

(W) The Tribunal's letter of 22 November 2005, recalling that the Tribunal already invited the Parties to agree on the conduct and sequence of the proceedings in its letter of 21 September 2005, indicating that it may limit the preliminary phase to the issue of Article 1901(3), and advising that a telephone conference was to be held with the Parties at a date and time to be determined in consultation with the Parties;

(X) The Tribunal's letter of 23 November 2005, giving the Parties supplementary directions regarding the consultations amongst themselves and the telephone conference;

(Y) Tembec's letter of 1 December 2005, advising that it had received the Tribunal's letter of 23 November 2005 on 29 November 2005 and that it had not been in a position to consult the other Parties;

(Z) The letters of 2 December 2005 from Canfor, Terminal and the United States concerning the Tribunal's letters of 22 and 23 November 2005 as well as the attached letter of 30 November 2005 from Canfor and Terminal to Tembec and the United States concerning the conduct and sequence of the proceedings;

(AA) The letter of 5 December 2005 from the Secretary of the Tribunal, explaining that due to sequential secretarial errors, of which the Tribunal was not aware, the Tribunal's letter of 23 November 2005 was sent by facsimile to Tembec on 29 November 2005, and directing that if and to the extent that it has not already done so, Tembec shall consult with the other Parties, aiming to reach agreement on

procedure (using the Tribunal's draft Procedural Order No. 1 as guidance) by 8 December 2005, as well as advising that the telephone conference was to take place on 12, 13 or 14 December 2005 to be determined in consultation with the Parties;

(BB) Tembec's letter of 7 December 2005, advising that "Tembec removes its Statement of Claim from these Article 1126 arbitration proceedings, and is filing in U.S. District Court for the District of Columbia notice of motion to vacate the Tribunal's decision and order of September 7, 2005, which terminated Tembec's Article 1120 arbitration proceedings," and requesting that "the Tribunal order its Secretary to terminate the Article 1126 proceedings as to Tembec, and make a final accounting of arbitration fees and costs up until today's date;"

(CC) The Tribunal's letter of 8 December 2005 to Canfor, Terminal and the United States, inviting them to comment on Tembec's letter of 7 December 2005 by 13 December 2005;

(DD) The letters of 13 December 2005 from Canfor, Terminal and the United States, commenting on Tembec's letter of 7 December 2005, the letter of Canfor and Terminal having as attachment Tembec's "Petition to Vacate Arbitration Award" and "Notice of Motion to Vacate Arbitration Award both dated 7 December 2005;"

(EE) The telephone conference held by the Tribunal with counsel for Canfor, Terminal and the United States, Tembec having declined the invitation to participate, on 15 December 2005 (*see also* the letter of 14 December 2005 from the Secretary of the Tribunal);

(FF) Tembec's first letter of 15 December 2005, received during the afore-mentioned telephone conference, announcing that it is preparing a letter in response to the United States' letter of 13 December 2005 "requesting the Tribunal to enter an order dismissing Tembec's claims with prejudice," and further stating that "Tembec will not participate in the conference call because it has withdrawn its Statement of Claim;"

(GG) Tembec's second letter of 15 December 2005, received by the Tribunal on 16 December 2005, advising that "As the only claimant seeking court review of the Tribunal's September 7 order, Tembec acted so as not to interfere with the claims of the other parties;" that "Tembec has not withdrawn its claims against the United States under NAFTA Chapter 11;" that "The United States agrees that Tembec should be dismissed, but with prejudice . . . and effectively confirms that dismissal is in order;" that "The United States errs only with respect to prejudice;" and that

"The Tribunal should order its Secretary to terminate the Article 1126 proceedings as to Tembec."

THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:

1. Position of Tembec

1.1 Canfor, Terminal and the United States shall respond to the letters referred to in Recitals (FF) and (GG) above by 22 December 2005.

1.2 Pending resolution of Tembec's request, Tembec is considered to continue to be a party to the present proceedings and, accordingly, is referred to in this Order on the same footing as the other Claimants. Upon resolution of that request, this Order may be modified as will be required, having regard to Tembec's position as resolved.

1.3 There are no existing circumstances justifying a suspension of the present proceedings in light of Tembec's motion referred to in Recital (BB) above (*see also* Recital (DD) above).

2. Scope of the Preliminary Phase of the Consolidation Proceedings

2.1 The objection raised by the United States on the basis of Article 1901(3) of the NAFTA with respect to the claims filed by the Claimants, referred to in Recital (J) above, shall be addressed and decided upon in a preliminary and separate phase of the proceedings in accordance with the terms of this Order.

2.2 All other objections as to jurisdiction and admissibility by the United States and issues related thereto raised by the Claimants are joined to the merits.

2.3 The objection referred to in Sub-section 2.1 above is hereinafter referred to as the "Preliminary Question."

2.4 If and to the extent that the Arbitral Tribunal retains jurisdiction over the Claimants' claims, or part thereof, the Tribunal will consult the Parties about the further conduct of the proceedings. The provisions of this Order shall apply also to such a merits phase, unless the contrary is expressly stated in this Order and subject to additional consultations about the further conduct of the proceedings.

3. Sequence of the Preliminary Phase

3.1 The United States shall file a Memorial on the Preliminary Question ("US-MPQ"), summarizing the objection with respect to the claims of Canfor and Tembec, and setting forth its objection with respect to the claims of Terminal, by 21 December 2005.

3.2 The US-MPQ shall be accompanied by hard copies of all written submissions made by the United States, together with all Exhibits, filed in the Article 1120 Arbitrations in *Canfor*, *Tembec* and *Terminal*, as well as the transcript of the hearing in *Canfor* held on 7-9 December 2004.

3.3 Canfor and Tembec shall file each a Counter-Memorial on the Preliminary Question, summarizing their responses to the objection of the United States, by 6 January 2006 ("CA-CMP" and "TC-CMP," respectively). Terminal shall file a Counter-Memorial on the Preliminary Question, setting forth its response to the objection of the United States, by 6 January 2006 ("TL-CMP").

3.4 The CA-CMP, TC-CMP, and TL-CMP shall be accompanied by hard copies of all written submissions made by each of the Claimants, together with all Exhibits, filed in the Article 1120 Arbitrations in *Canfor*, *Tembec* and *Terminal*, respectively.

3.5 The material referred to in Sub-sections 3.2 and 3.4 above need not be submitted again to the Claimants and Respondent, respectively, provided that a particularized list is submitted concerning the material provided to the Tribunal.

3.6 The Tribunal invites the Parties to file the submissions and Exhibits, including authorities, referred to in the present Section 3, also in PDF format on a CD Rom.

3.7 A hearing on the Preliminary Question shall be held in Washington, D.C., on Wednesday, 11 January and Thursday, 12 January 2006, Friday, 13 January 2006 being a day of reserve.

3.8 The dates mentioned in the preceding Sub-section are determined in consideration of: the stated availability of counsel for Canfor and Terminal during those dates; the stated unavailability of counsel for Canfor and Terminal during five of the first seven months of 2006; the unavailability of members of the Tribunal during the periods, totalling two months, that counsel for Canfor and Terminal states to be available; the fact that arbitration should take place with due dispatch; and the fact that counsel for Canfor and Terminal is familiar with the objection based on Article

1901(3) of the NAFTA since it was already the subject of a briefing and a hearing in the Article 1120 *Canfor* arbitration during the period 7-9 December 2004. Moreover, it does not appear that developments in the Softwood Lumber dispute since then were such that they would change Claimants' case with respect to the United States' objection based on Article 1901(3) of the NAFTA in the sense that more time is required to prepare the Counter-Memorial and for the hearing.

3.9 For as long as Tembec is a party to these proceedings, the provisions of this Section 3 too apply to it as well, the dates having been determined in its absence which is due to its refusal to participate in the telephone conference held on 15 December 2005 (*see* Recitals (EE) and (FF) above).

4. Extensions of Time

4.1 Extensions of time may, upon application of a Party or on its own motion and before or after expiry of a time limit, be granted by the Arbitral Tribunal.

5. Arrangements concerning Written Submissions and Notifications

5.1 All notifications and written submissions from the Parties to the Arbitral Tribunal and *vice versa* as well as filings of submissions by the Parties in the arbitration shall be by delivery against receipt, internationally known courier services, facsimile transmission, email or any other means of telecommunication that provides a record of the sending thereof.

5.2 The communications referred to in Sub-section 5.1 above shall simultaneously and by the same means be provided by a Party to all other Parties and the members of the Tribunal, with a copy to:

International Centre for Settlement of Investment Disputes
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

c/o Gonzalo Flores
Tel: +1 (202) 458-1505
Fax: +1 (202) 522-2615 /2027
Email: gflores@worldbank.org

5.3 All notifications and written submissions shall be routed directly by the Parties, and if emanating from the Tribunal, via ICSID, to:

Canfor Corporation
and
Terminal Forests Products, Ltd.:
Mr. P. John Landry
DAVIS & COMPANY LLP
2800-666 Burrard Street
Vancouver, British Columbia
Canada V6C 2Z7

Tel: +1 (604) 643 2953
Fax: +1 (604) 605 3588
Email: john_landry@davis.ca

and
Mr. Keith E. W. Mitchell
HARRIS & COMPANY
1400 – 550 Burrard Street
Vancouver, British Columbia
Canada V6C 2B5

Tel: +1 (604) 643 2958
Fax: +1 (604) 605 3702
Email: kmitchell@harrisco.com

Tembec Inc.,
Tembec Investements Inc.,
and
Tembec Industries, Inc.:
Mr. Elliot J. Feldman
Mr. Mark A. Cymrot
Mr. Michael S. Snarr
Mr. Ronald J. Baumgarten
BAKER & HOSTETLER LLP
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304
United States of America

Tel: +1 (202) 861 1679
Fax: +1 (202) 861 1783
Email: EFeldman@bakerlaw.com; Cymrot@bakerlaw.com; rbaumgarten@bakerlaw.com; MSnarr@bakerlaw.com

United States of America:
Mr. Mark A. Clodfelter
Assistant Legal Adviser
Office of the Legal Adviser
Ms. Andrea J. Menaker
Chief, NAFTA Arbitration Division
Mr. Mark S. McNeill
Attorney Advisor
Office of International Claims
and Investment Disputes
UNITED STATES DEPARTMENT OF STATE
2430 E Street, N.W.
South Building, Suite 203
Washington, DC 20037-2800
United States of America

Tel: +1 (202) 776 -8451
Fax: +1 (202) 776 -8481
Email: clodfelterma@state.gov; MenakerAJ@state.gov; McNeillMS@state.gov

5.4 All notifications and written submissions shall also be routed directly by the Parties or, as the case may be, via ICSID, to the respective addresses of the Arbitrators:

Professor Armand L.C. de Mestral, Arbitrator
Faculty of Law, McGill University
3674 Peel Str
Montréal, Quebec
Canada H3A 1W9

Tel: + 1 (514) 398 6643
Fax: + 1 514 (398) 3233
Email: armand.de.mestral@mcgill.ca

Davis R. Robinson, Arbitrator
3729 Fordham Road, NW
Washington, D.C. 20016
United States of America

Tel: +1 (202) 986 8048
Fax: +1 (202) 986 8102
Email: drrobins@llgm.com

Professor Albert Jan van den Berg, President
c/o Hanotiau & van den Berg
IT Tower, 9th floor
480 Avenue Louise, B.9
1050 Brussels
Belgium

Tel: +32 (2) 290 3913
Fax: +32 (2) 290 3942
Email: ajvandenberg@hvdb.com

5.5 Any change of name, description, address, telephone or facsimile number, or email address shall immediately be notified by the Party or Arbitrator concerned to every other addressee referred to in this Section. Failing such notification, notifications and written submissions sent in accordance with the present Section shall be valid.

5.6 The date of receipt, electronically or in hard copy, by a Party or, as the case may be, by ICSID, shall be deemed to be the date of receipt of a notification or written submission.

5.7 The number of written submissions by the Parties shall be as follows:

- one copy for each Arbitrator;
- two copies for each Party; it being understood that two copies to the joint counsel for Canfor and Terminal will be sufficient;
- one copy for ICSID.

5.8 The abbreviations for written submissions indicated in Section 3 above may be used in these proceedings for reasons of convenience.

5.9 Any binder containing a submission within the meaning of Section 3 above, documents within the meaning of Section 7 below and witness statements within the meaning of Section 8 below shall be numbered consecutively in Roman numerals. The number of each binder submitted by Claimants shall be preceded by the identifier "CA" for Canfor, "TC" for Tembec, and "TL" for Terminal; the number of each binder submitted by the United States shall be preceded by the identifier "US." No such numbering is required for the material referred to in Sub-sections 3.2 and 3.4 above.

6. IBA Rules on Evidence

6.1 Without prejudice to the discretionary power of the Arbitral Tribunal with respect to matters of evidence, and, in particular, Articles 24 and 25 of the UNCITRAL Arbitration Rules, the IBA Rules on the Taking of Evidence in International Commercial Arbitration of 1999 will apply as a guideline.

7. Documentary Evidence

7.1 A Party shall not be permitted to submit additional documents after submission of the Memorials mentioned in Section 3 above, save under exceptional circumstances as determined by the Arbitral Tribunal. Any Party wishing to submit documents after the filing date of the relevant Memorial must make an application to the Tribunal setting forth the reasons for their request. If the Tribunal grants an application for submission of an additional document after the aforementioned dates, the Tribunal shall ensure that the other Parties be afforded sufficient opportunity to make their observations concerning such a document.

7.2 The documents shall be submitted in the following form:

(a) Exhibits shall be contained in a separate binder, each Exhibit having a divider bearing on the tab the Exhibit's identification number;

(b) The Exhibits shall be numbered by each Party consecutively throughout these proceedings beginning with "0001";

(c) The number for each Exhibit containing a document produced by Canfor shall be preceded by the identifier "CA"; by Tembec "TC", by Terminal "TL"; and by the United States "US;"

(d) Exhibits shall also be submitted in PDF format, without prejudice to the invitation referred to in Sub-section 3.6 above;

(e) A Party shall be permitted to produce within one Exhibit several documents relating to the same subject matter, provided that each page within such Exhibit is numbered separately and consecutively; additionally, a Bates Numbering per page is appropriate;

(f) Each submission of documents shall be accompanied by an index to the documents; after submission of the last documents, the Parties shall jointly prepare a chronological index of the documents;

(g) Voluminous or technical documentary evidence may be submitted in the form of a summary of documents, containing lists and/or categories of documents, without prejudice to the right of a Party or the Arbitral Tribunal to request the production of any document so listed or categorised; the underlying documentary evidence is part of the record;

(h) Voluminous or technical documentary evidence may be analysed in, and be presented in the form of, reports by qualified persons without prejudice to the right of a Party or the Arbitral Tribunal to request the production of any document on which any such report is based; the underlying documentary evidence is part of the record.

7.3 The use of demonstrative exhibits (such as charts, tabulations, etc.) is allowed at the hearing, provided that no new evidence is contained therein and that the Parties base such demonstrative evidence on evidence in the record. Each Party shall number its demonstrative exhibits consecutively ("CA-Demo," "TC-Demo," "TL-Demo," and "US-Demo"). The Parties shall file their demonstrative exhibits seven business days prior to the hearing, it being understood that said date shall be 9 January 2006 for the hearing referred to in Sub-section 3.7 above. The Parties shall identify the evidence in the record upon which each demonstrative exhibit is based.

7.4 With respect to requests for the production of documents, the IBA Rules on the Taking of Evidence in International Commercial Arbitration of 1999 will apply as a guideline, without prejudice to the discretionary power of the Arbitral Tribunal with respect to matters of evidence, and, in particular, Articles 24 and 25 of the UNCITRAL Arbitration Rules.

7.5 Documents include e-mails and other information stored electronically, which shall be provided to the other Party in hard copy format or CD Rom. Documents also include audio and video tapes, copies of which shall be provided to the other Party in the same format.

8. Evidence of Witnesses

8.1 Evidence by witnesses shall be admissible only if a witness statement has been submitted, subject to the provisions of this Section.

8.2 Each witness statement shall:

(a) reflect whether the witness is a witness of fact or an expert witness;

(b) contain the name and address of the witness, his or her relationship to any of the Parties (if any), and a description of his or her qualifications;

(c) contain a full description of the facts, and the source of the witness' information as to those facts, sufficient to serve as that witness' evidence in the matter of the dispute, or, in the case of an expert report, contain a statement of the facts on which he or she is basing his or her expert conclusions as well as his or her expert opinions and conclusions, including a description of the method, evidence and information used in arriving at the conclusions;

(d) be signed by the witness and give the date and place of signature.

8.3 The witness statements shall serve as the witness's direct examination at the hearing, subject to the provisions of Sub-section 10.6 below.

8.4 If a Party is unable to obtain a witness statement because a witness is unwilling to give a statement and/or to appear at the hearing, or if a witness cannot be made available for examination at the hearing, the Arbitral Tribunal is free to draw any inferences it deems appropriate under the circumstances.

8.5 Witnesses who are affiliated with a Party shall be treated in the same manner as witnesses not affiliated with a Party, without prejudice to the relevance, weight and materiality of the evidence offered by a witness affiliated with a Party.

8.6 Each Party shall advance the costs connected with the evidence by its witnesses, including the cost of preparing the witness statements and attendance at the hearing, without prejudice to the decision of the Arbitral Tribunal as to which Party shall ultimately bear those costs.

8.7 Unless the contrary is expressed, the provisions of this Section 8 also apply to expert witnesses.

9. Preservation of Evidence

9.1 The undertaking by the United States in footnote 6 of its letter of 21 October 2005 is noted, according to which the United States will act as if the agreement reached in the *Tembec* proceeding regarding the preservation of certain evidence were in force.

9.2 Without prejudice to the question whether the agreement referred to in Sub-section 9.1 above is still in force, the Arbitral Tribunal orders the United States to adhere to its undertaking until the present arbitration is completed by a final award or is terminated otherwise.

10. Hearing

10.1 A hearing on the Preliminary Question shall take place in Washington, D.C., on the dates mentioned in Sub-section 3.7 above.

10.2 A pre-hearing telephone conference shall be held between the President of the Arbitral Tribunal and the Parties in order to resolve procedural and administrative matters in preparation for the hearing, at a date and time to be determined in consultation with the Parties. The date for the telephone conference regarding the hearing on the Preliminary Question is tentatively set on Monday, 9 January 2006, subject to consultation amongst the Parties and the President of the Tribunal.

10.3 The hearing on the Preliminary Questions shall proceed as follows:

(a) Opening Statement by Respondent;

(b) Opening Statement by Claimants;

(c) Examination of Respondent' witnesses, if any;

(d) Examination of Claimants' witnesses, if any;

(e) Closing Statement by Respondent;

(f) Closing Statement by Claimants.

10.4 Claimants and Respondent shall be afforded a sufficient amount of time at the hearing in which to present their case, which will be determined at the pre-hearing conference referred to in Sub-section 10.2 above. The Secretary of the Arbitral Tribunal will maintain a record of the time utilized by each Party and will advise the Parties thereof at the end of each day.

10.5 The maximum length of the Opening Statements shall be determined at the pre-hearing telephone conference referred to in Sub-section 10.2.

10.6 The procedure for examining witnesses at the hearing shall be the following:

(a) each witness shall make a statement to tell the truth;

(b) each witness shall confirm his or her Witness Statement;

(c) each witness giving oral evidence shall be directly examined by the Party producing the witness for a maximum of 10 minutes ("direct examination"), except in the case of expert witnesses, who shall be permitted to give a summary of their conclusions for an amount of time to be determined at the per-hearing conference. The witnesses shall then be examined by the Party opposing the witness ("cross-examination"), followed by re-examination by the Party producing the witness ("redirect examination");

(d) the cross-examination shall be limited to matters addressed in the witness statements, documents that have been submitted in the arbitration, oral evidence of the other Party's witnesses, and/or any other matter relevant to the outcome of the case;

(e) the redirect examination shall be limited to matters that have arisen in the cross-examination;

(f) questions to a witness during direct and redirect examination may not be unreasonably leading;

(g) the Arbitral Tribunal shall have the right to interject questions during direct examination, cross-examination and redirect examination, or to submit questions after redirect examination.

(h) the Arbitral Tribunal shall also at all times have complete control over the procedure in relation to a witness giving oral evidence, including the right to recall a witness at the request of a Party or on its own motion, provided that reasonable notice is given to the witness. The Tribunal may limit or deny, on its own motion or at the request of a Party, the right of a Party to examine a witness in direct examination, cross-examination or redirect examination if it appears to the Tribunal that such examination or evidence is unlikely to serve any further relevant purpose.

10.7 The question of sequestration of witnesses shall be determined at an appropriate time.

10.8 The hearing will be recorded by means of floor audio recording.

10.9 Each Party shall be responsible for ensuring the attendance of the witnesses in respect of whom it has submitted a witness statement as referred to in Sub-section 8.1 above, subject to the provisions of Sub-section 8.4 above.

10.10 The maximum length of the Closing Statements shall be determined by the Arbitral Tribunal after consultation with the Parties.

10.11 The Hearing shall be transcribed by court reporters (live note and overnight transcript), which will be arranged by ICSID.

11. Post-Hearing Briefs

11.1 In consultation with the Parties, the Arbitral Tribunal shall determine whether Post-Hearing Briefs will be submitted.

11.2 With respect to the Preliminary Question, the Tribunal is presently inclined to order the submission of Post-Hearing Briefs, but will rule on it after consultation of the Parties at the end of the hearing referred to in Sub-section 3.7 above.

12. Article 1128 Submissions

12.1 The Governments of Canada and Mexico may make submissions to the Arbitral Tribunal on a question of interpretation of the NAFTA in a manner and at a time to be determined in consultation with the Tribunal, those Governments and the Parties to the present proceedings.

12.2 With respect to the Preliminary Question, the Tribunal will invite the Governments of Canada and Mexico to make submissions within one week after the hearing referred to in Sub-section 3.7 above.

13. Language, Translation and Interpretation

13.1 The language of the proceedings shall be English.

13.2 All documents in a language other than the English language shall be translated into the English language insofar as their relevant parts are concerned only, provided always that they are simultaneously submitted with the original text to the Arbitral Tribunal and to the opposite Party or Parties. All translations shall identify the name and capacity of the translator. In the event that a translation is contested by any of the other Parties, the Party producing the document shall submit a certified translation thereof.

13.3 Any oral evidence by a witness at the hearing in a language other than the English language shall be simultaneously interpreted in the English language and *vice versa* by one or more sworn interpreters unless "handholding" interpretation is possible. Specific arrangements for interpretation at the hearing will be determined at the pre-hearing conference referred to in Sub-section 10.2 above.

14. Tribunal-Appointed Expert

14.1 In principle, the Arbitral Tribunal will not appoint an expert, unless it appears to it that such an expert is necessary to resolve one or more of the issues that are identified in the course of the proceedings. In any event, the Tribunal will consult the Parties beforehand as to whether such an expert is indeed required and if so, on his or her terms of reference.

15. Decisions by the Arbitral Tribunal

15.1 In accordance with the provisions of Article 31 of the UNCITRAL Arbitration Rules, any award or decision of the Arbitral Tribunal shall be made by a majority of the Arbitrators.

15.2 Procedural measures, including the signing of Procedural Orders, shall be taken by the President on behalf of the Arbitral Tribunal after consultation with the Co-Arbitrators. Before making such decisions, the Tribunal shall afford the Parties an adequate opportunity to present their case in relation thereto, unless the circumstances render such presentations inappropriate. In case of urgency, the President may order procedural measures alone, subject to revision, if any, by the entire Tribunal.

15.3 The Arbitral Tribunal shall be free to decide on any issue by way of a partial or interim award, or by a final award, as it may deem appropriate. All awards, whether interim or final, shall be in writing and shall state the reasons on which the award is based.

16. Place of Arbitration

16.1 The place of the arbitration is Washington, D.C., United States of America.

16.2 Irrespective of the place of signing, the award(s) shall be deemed to have been made at the place of the arbitration mentioned in the preceding paragraph.

17. Confidentiality and Privacy

17.1 Each Party is at liberty to apply for measures regarding information that it considers confidential.

17.2 The Arbitral Tribunal notes that none of the Parties anticipates a question regarding confidentiality with respect to the Preliminary Question.

18. Fees and Expenses

18.1 The members of the Arbitral Tribunal shall be remunerated on the basis of the ICSID Schedule for Fees and Expenses as from time to time in force.

18.2 The costs of the arbitration include the expenses incurred by the members of the Arbitral Tribunal.

18.3 With reference to Article 41 of the UNCITRAL Arbitration Rules, the deposit as an advance of the costs referred to in the preceding paragraph shall be arranged by ICSID.

18.4 The expression "party" in Article 41(1) of the UNCITRAL Arbitration Rules is interpreted by the Tribunal as meaning Claimants and Respondent, respectively (*comp.* Article 3(1) of the UNCITRAL Rules). Consequently, Claimants and Respondent shall bear each 50% of the advance on costs, without prejudice to the award on costs by the Tribunal.

19. **Administrative Services by ICSID and Secretary of the Arbitral Tribunal**

19.1 The arbitration shall be administered by ICSID, at the cost to be borne by the Parties.

19.2 The Arbitral Tribunal may appoint a Secretary at any time during the arbitration, whose expenses will be borne by the Parties as part of the costs of the arbitration.

20. **Status of Orders**

20.1 Any Order of the Arbitral Tribunal may, at the request of a Party or on the Tribunal's own initiative, be varied if the circumstances so require.

On behalf of the Arbitral Tribunal,

Albert Jan van den Berg,
President